

Management's requirement that all employees speak Spanish had a significant adverse discriminatory impact on African-Americans and, also, an adverse impact on other non-Hispanic applicants in violation of Section 703 (k) of Title VII, 42 U.S.C. § 2000e-2(k).

3. In response to the Complaint filed by the EEOC, Lawn Management denies each and every claim for relief.
4. The parties wish to avoid the risks, uncertainties and expenses of continued litigation. Accordingly, the parties have agreed to settle this lawsuit. Neither Lawn Management's consent to the entry of this Consent Decree nor any of the terms set forth in it shall constitute or be construed as an admission of liability or of any violation of the law or of the rights of any person. The parties agree that this Consent Decree (hereinafter sometimes referred to as the "Decree") is being entered into for the sole purpose of compromising disputed claims without the necessity for protracted litigation.
5. The Commission and Lawn Management stipulate to the jurisdiction of the Court and waive their right to a jury trial and the entry of findings of fact and conclusions of law on all issues.

IT IS ORDERED, ADJUDGED AND DECREED:

B. General Provisions

6. This Consent Decree is entered in full and complete settlement of any and all claims asserted by the Commission in Civil Action No. M-07- and the above-referenced Charge on behalf of Ronald Williams and the class of African-

Americans and other non Hispanic applicants the Commission represents, including but not limited to claims for back pay, front pay, compensatory damages, exemplary damages, pre-judgment and post-judgment interest, injunctive and declaratory relief, attorneys' fees and costs of court.

7. Lawn Management agrees that, for the duration of this Decree, the managers and employees responsible for screening applications, interviewing and hiring for covered positions will not discriminate against any individual with respect to recruitment, hiring, compensation, terms, conditions or privileges of employment because of such individual's race. Covered positions include all laborer, lawn maintenance and crew leader positions.

C. Charging Party Relief

8. Lawn Management will pay \$35,000 to Ronald Williams pursuant to a schedule set forth herein in full and final settlement of his claims. Within three (3) days of the issuance of the check to Charging Party a copy of the check shall be mailed to the Commission's counsel of record. The payment shall be sent by overnight express mail to either a current address provided by Commission for the charging party, or if no current address is on file, the check may be mailed or delivered to the Commission's office. The check will be made out to the charging party, Ronald Williams. The schedule of payments is as follows:

- a) First payment of \$15,000 to be paid within 10 days of the entry of the Consent Decree;

- b) The following four payments, each in the amount of \$5,000, shall be delivered no later than 35, 95, 125, and 185 calendar days after the entry of this Decree.

D. The Payment Class

9. The claims made the subject of this Consent Decree were made by the EEOC on behalf of charging party Ronald Williams ("charging party") and a class of African American applicants and deterred applicants for lawn maintenance positions with Lawn Management. The payment class includes: (1) all identified members of the class; (2) all unidentified African Americans and other non Hispanic applicants who applied for the covered positions on or after May 1, 2004 to May 31, 2007 but were not hired; and 3) all unidentified African Americans and other non Hispanic applicants who were deterred from applying for the covered positions on or after May 1, 2004 to May 31, 2007.

E. The Hiring Class

10. The hiring class shall consist of certain African-Americans and other non Hispanic applicants who applied for the covered positions between May 1, 2004 and May 31, 2007, and were not hired, or were deterred from applying for covered positions in the above time period and have been or will be offered employment by Lawn Management pursuant to this Decree, hereinafter referred to as the "hiring class. Members of the hiring class may also be qualified for membership in other classes defined by this Decree.

Subject to job vacancies, each member of the hiring class will be hired if he or she meets defendant's hiring criteria. Each member of the hiring class may reject any offer of employment that has been made by Lawn Management, or will be made pursuant to this Decree but still maintain membership in the payment class.

F. Monetary Relief

11. Without admitting liability, Lawn Management shall pay the additional sum of FIFTEEN THOUSAND DOLLARS (\$ 15,000.00), in full and final settlement of the Commission's lawsuit to provide monetary relief to the payment subclass identified by the Commission. The Commission shall determine in its sole discretion the distribution criteria and the level of distribution to the qualified claimants as well as whether or not someone is a member of the payment class and is eligible for monetary relief under the terms of the Decree and if so, how much money that qualified claimant will receive from the payment subclass settlement fund. All arguably qualified non-Hispanic applicants will be considered members of the payment class unless there is an unambiguous disqualifier and/or the applicant is not fluent in English. In light of the investigative findings and Letter of Determination, preference shall be given to English speaking African American class members. The Commission will provide counsel for Lawn Management and its designated consent decree liaison ("liaison") the schedule of payments. In determining the national origin and race of any persons, the definitions utilized in the EEO1 regulations shall be definitive.

Based on information provided to it by Lawn Management and from other sources, the Commission will provide Lawn Management with a final list containing the names and last-known addresses of each class-member who will receive a portion of the class settlement fund and the amounts to be paid to each. Each class-member will execute a separate release of their claim. Lawn Management shall mail or deliver a settlement check to each identified payment class member at the address provided to it by the Commission either ten (10) calendar days after the class-member executes his release, or ten (10) calendar days after the Court's entry of the Consent Decree, whichever is later. Within three (3) days of the issuance of the checks to the class-members, a copy of each check shall be mailed to the Commission's counsel of record.

13. In the event that the check payable to any payment class member is not cashed or deposited within thirty (30) days of its mailing, Lawn Management will notify the Commission within ten (10) days. At the direction of the Commission, Lawn Management will issue second checks to those class members who timely cashed their checks, on a pro-rata basis, in an amount in the aggregate that fully depletes the total amount of the settlement check(s) that have not been cashed by the other class members so long as the aggregate recovery to each class member does not exceed \$ 4000. In the event that full pro rata distributions to class members who have already received an initial check would exceed \$4000, each such class member shall receive a second check that brings his total compensation to no more than

\$4000. If any funds remain in the payment class fund after this subsequent distribution, and less than five (5) qualified class members have been certified, the remaining funds shall be rebated to the company so long as the company documents that the rebate has been fully depleted within two years of its receipt for curative activities such as remedial hiring advertisements, distribution of enhanced training materials concerning its equal employment opportunity responsibilities and related initiatives approved by the Commission. To the extent that any rebated funds are not appropriately spent within two years of receipt, the remaining balance of those funds shall be donated to a nonprofit organization that delivers services to African American job seekers in the metro Houston area. The parties will endeavor to jointly select an appropriate organization to receive this potential donation but in the event that a joint decision is not forthcoming within a month after the residuary amount in the fund is established, the Commission has authority to determine which organization shall be given the funds. That organization will be advised that the source of the donation is the remainder of the payment class fund in this matter.

14. None of the payment subclass settlement fund shall revert back to Lawn Management unless the specific criteria are strictly apparent and adhered to.
15. The sums payable to the payment subclass members may be subject to federal income tax. Lawn Management will issue Internal Revenue Service ("IRS") Forms 1099 to each payment subclass member for all

sums paid to him or her pursuant to this Decree and each class member shall be responsible for any taxes which may be assessed on the payment(s) to him.

G. Liaison

16. Lawn Management will appoint a high level facilitator (liaison) who reports directly to the president. His evaluation will be partially based on successful achievement of the settlement objectives. The liaison has authority to directly contact the EEOC and receive contact from it. The facilitator shall sign each quarterly compliance report vouching for its accuracy. The initial quarterly report will indicate what procedures and staff orientation will be utilized to inculcate a positive approach to achieve the Decree's recruitment, hiring and retention objectives. That periodic report will also set forth additional initiatives undertaken by the company as well as its assessment how it can improve its hiring results and general compliance with the agreement. The facilitator has an on going responsibility to advise the Commission regarding his plan for implementing all terms of the Decree.

H. Job descriptions

17. Lawn Management shall revise all its job descriptions to remove the requirement that Spanish fluency is a job requirement. If Lawn Management decides that fluency in any language other than English is required to perform the underlying core tasks of the job ("job requirements"), it shall provide documentation to the effect to the Commission for its review and

consideration.

Training

18. Annually, for the duration of the Decree, Lawn Management will provide an antidiscrimination training program for all managers and employees who are involved in the recruitment and hiring process at Lawn Management. Specifically, the training attendees will include but not be limited to the liaison and other managers, supervisors and employees who replace these individuals or separately become involved in the recruitment and hiring process during the period of time covered by the Decree. The training shall also specifically address compliance with all aspects of the Consent Decree, and a document setting forth a summary of the precipitating charge, amendments thereto, the letter of determination, allegations in the Complaint and provisions of this Decree shall be provided to each trainee. The training will address Lawn Management's record-retention obligations under federal law and this Decree as well as the theories of disparate treatment and disparate impact upon which the alleged wrongdoings in this case were arguably premised. The minimum duration of each annual training session shall be two (2) hours. The first such training shall be completed within four (4) months from the date the Decree is entered. Lawn Management shall submit to the EEOC, at least thirty days in advance of each year's training session, the name and resume of the program provider, a curriculum outline indicating the information to be addressed during the program and copies of all agendas and materials to be distributed at the training seminar. Lawn

Management intends to use either Kathrine Nicol as their consultant/lecturer for purposes of each annual training session, or another individual who shall have at least five (5) years of experience practicing employment law. Should Lawn Management elect to use someone other than Kathrine Nicol as its consultant/lecturer, it shall notify the EEOC of the identity of the consultant/lecturer in writing at least thirty (30) days prior to that seminar, subject to the approval of the Commission, which will not be unreasonably withheld. Written acknowledgment of attendance at each training session shall be obtained by Lawn Management from all individuals attending the training, and these attendance lists shall be retained by Lawn Management for the duration of this Decree. A copy of the attendance list shall be forwarded to the EEOC within thirty (30) days of each training session. Should the Commission elect to send a representative to any training session, it shall designate its representative and notify Lawn Management of this election in writing no less than five (5) business days before the training session.

19. A company representative shall be available for up to two full days a year (or 16 hours) to participate in panels of company managers and human resources managers convened by the Commission to discuss compliance with agreements, effective recruitment techniques and related areas, and may participate in making presentations to training attendees. If the Commission decides to utilize this resource, it shall provide the company with reasonable notice.

J. Recruitment and Hiring

20. Within sixty (60) days after entry of the Decree, Lawn Management will make a good faith effort to determine which African-Americans, if any, were denied employment at any time from July 1, 2005 to July 1, 2007 because they did not speak Spanish or were deemed to be incompatible with its then current workforce. Lawn Management will advise the Commission of the identity of any such individuals, providing the Commission with each such person's application. If it is determined that the application does not contain the now current addresses for any of these individuals, at its option, the EEOC has the right to provide Lawn Management, within thirty (30) days of its receipt of those applicants' names and applications, with the best-known addresses of those African-Americans that it may be able to locate. The parties agree that any such applicants will be fairly considered for receipt of compensation as members of the payment class and will also be given immediate consideration for hiring for any appropriate vacancies that become available within six months of the initial provision of their respective applications to the Commission pursuant to this section. To enhance the recruitment prospects for qualified Black and other non-Hispanic the company shall attempt to recruit for work the African-American and other English speakers identified through the process of the locating the payment and hiring classes.
21. Lawn Management will engage in active recruitment of African-American and other non-Hispanic applicants for positions with IL. Askie from hiring qualified applicants who may be identified by reviewing applications currently on file,

Lawn Management shall undertake the following commitments, practices and procedures:

- a) Lawn Management will set a flexible hiring goal to achieve an employee census of 15% non Hispanic workers in covered positions and will use its best efforts to achieve that goal. Lawn Management will use its best efforts to have two thirds of its non Hispanic work force in its covered positions consist of African American workers. The covered positions include all jobs including but not limited to labor positions and lead positions at Lawn Management other than supervisory and management jobs.
- b) Supervisory positions
Lawn Management will continue to recruit employees who are fluent in English for its supervisory and management positions with the goal of developing more work crews in which the crew leaders and supervisors are either fluent in English or are bilingual (English/Spanish).
- c) To achieve its recruitment goals, Lawn Management will utilize community organizations, such as the Urban League, as well as job fairs, and it will advertise in local publications reasonably calculated to attract qualified African American and other non-Hispanic applicants.
- d) Lawn Management will enhance its supervisory oversight to assure that workers are not mistreated by co-workers or others because of

their race or color. Nor will it allow impermissible customer preferences to undermine the achievement of its hiring goals.

- e) To achieve its recruitment goal, Lawn Management understands that a reliance on word of mouth recruitment and the filling of positions before they are publicly announced are procedures which have a tendency to undermine its recruitment goals and to maintain in place a workforce which has few if any African American or other non-Hispanic laborers. With those consequences in mind, Lawn Management will discourage practices that undermine its flexible hiring goal. It will discourage its lead men, crew leaders and supervisors from hiring their own relatives or the relatives of current employees as this has an adverse disparate impact for African-American applicants. In that vein, no special accommodations will be provided for monolingual Spanish speaking employees such as picking them up at home, allowing them to meet co-workers en route to work to catch a ride unless similar accommodation is provided for other non-Spanish speaking laborers.

- f) To further these objective, and for the duration of this Decree, Lawn Management will utilize the following approaches:

- i) when placing job advertisements for its positions, Lawn Management's advertisements shall contain language indicating that Lawn Management, an equal opportunity employer, seeks qualified applicants:

ii) If it uses pictorial ads, these shall feature at least one African-American as shall any brochures that is provides to customers or prospective customers If same contain any pictures, photographs or graphics that appear to display any members of its work force;

iii) an advertisement compliant with items i) and/ or ii) herein will be placed at least every other month in Greensteeets and/or any community newspaper which is directed toward an African-American readership; and

iv) Lawn Management will hold job fairs or participate in job fairs which seek both African-American applicants.

22. During the pendency of this Decree, Lawn Management shall maintain the applications of qualified African-American applicants in an active status for a period of at least one year from the application date. During the active period, the qualified African-American applicants shall be considered for vacancies which arise. If Lawn Management determines that any African American applicant is not qualified, its basis for that decision shall be attached to that person's application, and that documentation may be reviewed by the Commission.

K. Notice

23. Within ten days after entry of this Decree, Lawn Management will conspicuously post the attached notice (Exhibit "A") in a location in its office which is accessible to all employees and applicants who visit its main office.

Lawn Management will assure that the notice remains posted for the duration of the Decree. Lawn Management will advise the Commission of the location(s) of the notice no later than when it provides the Commission with its first applicant flow log pursuant to this Decree, and it shall provide the Commission with a signed copy of the notice.

L. Record-keeping

24. Lawn Management will develop and maintain an applicant flow log to document all persons seeking employment. On a quarterly basis, Lawn Management will provide the Commission with a listing of all employees who have worked at any time during last calendar quarter in alphabetical order, noting job title, work crew assignment, name of crew leader(s), and, as to each employee, it shall list the date his (or her) employment started and his national origin and language fluency and race. As to any former or current employee recruited within the past 3 months, the log will make note of the method utilized to recruit that employee (walk-in, word of mouth referral, newspaper, former employee, job fair, community organization etc.) At EEOC's option, this list will be submitted in a data base format acceptable to Commission.
25. Lawn Management shall also maintain an applicant flow log that, at a minimum, records the name, date of application, address, telephone number, national origin and race of all applicants and whether an offer of employment was extended to the applicant. In the event that an offer is made, but not accepted as to any African American applicants, the applicant flow log shall

records concerning hiring, promotion, demotion, transfer, lay-off or termination have to be preserved for a period of at least one year from the date of making of the record or the personnel action involved, whichever occurs later. Also, pursuant to 29 C.F.R. § 1602.14, where a charge of discrimination or a lawsuit has been filed against companies under Title VII or the Americans with Disabilities Act, those companies shall preserve all personnel records relevant to the charge or action until the later of the following events: final disposition of the charge or final disposition of the action including the period during which a judgment, consent decree or other resolution is pending. Lawn Maintenance undertakes to continue to comply with these regulations. It will retain the foregoing records for the entire period of the Decree and, if any motion or other application is made to seek enforcement of the Decree and that application has not been resolved during the life of the Decree, those records shall be retained until the underlying matter has been resolved.

M. Reporting Requirements

28. Reports required pursuant to the Decree shall be in writing and mailed to the following address: Equal Employment Opportunity Commission, Attention: Rose Adewale-Mendes, Supervisory Trial Attorney, 1819 Smith Street, 6th Floor, Houston, TX 77002.
29. On an annual basis, no later than 45 days before Lawn Management would be required to file the annual EEO1 form, if Lawn Management determines it is not required to file that EEO1 form, it shall inform the

EEOC's Houston office why it believes that it is not required to file an EEO-1, if the local EEOC office disagrees with its view that it is not obliged to file the EEO1 report, the parties will consult in an effort to resolve the disagreement and will not resort to the enforcement procedures set forth within unless necessary to resolve the dispute. If Lawn Management decides that it is required to file the EEO1 during any year covered by this Decree, aside from submitting the EEO1 to the official recipient, it shall provide an extra copy of its report directly to the local office of the EEOC at the time it files the official report.

N. Monitoring Inspection

30. At the EEOC's option, its representatives may undertake an annual monitoring inspection at Lawn Management's Houston facility. The EEOC shall provide to Lawn Management's counsel, or its liaison, at least ten (10) days written notice of any such inspection, and counsel and the liaison may attend. At a monitoring inspection, Lawn Management will make employees available to the EEOC representatives for short interviews and those Commission representatives shall be permitted to speak with any of Lawn Management's employee in a group and/or individually and shall be permitted to contact any employee who is present as well as any who are not present on the day the EEOC representatives conduct the monitoring inspection. Within three (3) business days of the completion of an inspection, Lawn Management will, at the Commission's request, provide the Commission's council of record with the names, job titles, race, and home

telephone numbers of any employees who were not present on the occasion of the monitoring inspection so that the EEOC may, at its option, unilaterally contact any non-managers who were not at work during the monitoring visit. In the event that the EEOC intends to interview any management official who was not then present, the EEOC will contact Lawn Management's counsel or its liaison who may participate in any resulting interview. If the EEOC chooses to forego a monitoring inspection in any twelve month period succeeding the entry of this Decree, that shall not be deemed to waive its right to arrange subsequent monitoring inspections in successive twelve month periods during the period up to the date of the expiration of the Decree.

G. Miscellaneous Provisions

31. Each party to this action shall bear their own costs and attorney's fees.
32. This Decree shall be binding on each party. Lawn Maintenance will timely advise the Commission of its intent to sell the company and/or its assets. Any purchasers of the company shall be construed to be successors in interest who will be responsible for the undertakings in this Decree. Lawn Management will notify any successor-in-interest of the existence and terms of this Decree, and shall simultaneously notify the Commission by copying it with the referenced correspondence.
33. This Decree shall remain in effect for 4 years from the date of its entry by the Court. If the Commission determines that Lawn Management has reached the recruitment goal and retains that level of non-Hispanic employment for

also indicate the date of the offer, what specific job was offered, the rate of pay, and it shall document, to the best of its knowledge, why the offer was not accepted and the date of that decision. Lawn Management will provide both these log to the Commission on a quarterly basis for the duration of the Decree. Lawn Management may ask applicants to self-identify their race and national origin, and may represent that this request is made pursuant to an Agreement with the EEOC. If the applicant does not choose to self-identify, that does not provide a basis to reject the application but, rather, in that instance, Lawn Management shall make a good faith contemporaneous notation of that applicant's apparent national origin and race based on its visual survey of that applicant. Its application shall have a notation as to the race and national origin and an indication if that notation was based on information provided by the applicant or a company representative. This requirement may be partially satisfied by attaching a copy of the applicant's driver's license to the application.

26. If Lawn Management seeks to invoke the provision that would terminate the Agreement at the end of three years by reason of its belief that it will meet the recruitment goal for the entire third year of the Agreement, it must advise the Commission of that expectation no later than the end of the third quarter of the third year of the Agreement, and shall provide the Commission with any documentation that it claims will tend to verify its claimed basis to invoke the provision for early termination of the Agreement.

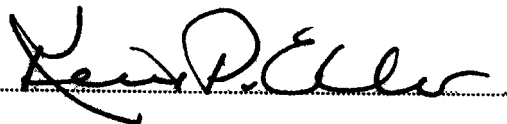
27. Pursuant to 29 C.F.R. § 1602.14, all companies' personnel or employment

the full third year of the Consent Decree, Lawn Management's responsibilities thereunder expire at the end of three years, not four years.

34. During the effective period of this Decree, the Court shall retain jurisdiction to assure compliance with this Decree and to permit entry of such further orders or modifications as may be appropriate.
35. The parties to the Decree are specifically authorized to seek Court-ordered enforcement of this Decree in the event of a breach of any of the provisions herein. In the event either party to the Decree believes the other has breached any provision of this Decree, counsel for the party claiming a breach shall notify counsel of the liaison for the party said to be in breach ("breaching party"), in writing, of such breach. In that event, unless irreparable injury would be caused by a delay, before moving to enforce such provision(s), the non-breaching party will afford the breaching party the opportunity to remedy as may be appropriate any such alleged violation within 30 days of such notice. In the event the parties disagree whether or not a fully satisfactory cure has been effected, the non-breaching party retains the right to seek immediate Court enforcement of the terms of the Decree.
36. Nothing in this Decree shall be construed to preclude the Commission from investigating a timely charge and filing a separate action under Title VII or any other statute which the Commission enforces in the future for any alleged violation by Lawn Management which is not the subject of this Decree.


37. No waiver of any of the terms of this Decree shall be valid unless made in writing and signed by the parties.
38. No modification or alteration to the terms of this Decree shall be valid unless made in writing and signed by the parties.
39. If one or more provisions of this Decree are rendered unlawful or unenforceable by an Act of Congress, or otherwise, all other provisions of the Decree shall remain in full force and effect.
40. Each signatory certifies that s/he has authority to execute this document on behalf of his/her client.
41. This Consent Decree may be signed in counterparts.
42. This Decree shall expire by its own terms after four years from date of entry, without further action by the parties.
43. The parties agree to entry of this Decree and judgment subject to final approval by this Court.
44. The provisions of the Decree are the product of negotiation between the parties to this litigation and are not intended as precedent in other cases involving claims of discrimination being asserted by the Commission against Lawn Management by any plaintiff.

Signed this 11th day of October, 2007 at Houston, Texas.



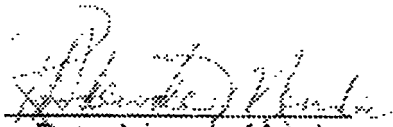
United States District Judge

AGREED AND CONSENTED TO:



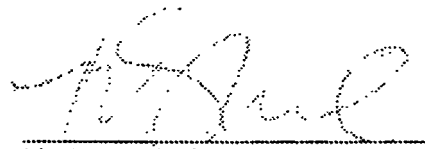
William Bradley Cox
General Manager
Lawn Management Co., Inc.

ATTORNEY FOR PLAINTIFF
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

By: 

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**NOTICE TO THE EMPLOYEES OF
LAWN MANAGEMENT CO., INC.**

**THIS NOTICE IS POSTED PURSUANT TO A CONSENT DECREE ENTERED INTO
BETWEEN THE EEOC AND LAWN MANAGEMENT CO., INC.**

1. Federal law requires that there be no discrimination against any employee or applicant for employment because of the employee's sex, race, color, religion, national origin, age or disability with respect to compensation, hiring or other terms, conditions or privileges of employment.
2. Lawn Management Co., Inc. supports and will comply with such Federal law in all respects and will not take any action against employees because they have exercised their rights under the law by filing charges with the Equal Employment Opportunity Commission (EEOC), providing information to the EEOC, and/or receiving compensation for the settlement of any employment discrimination claim.
3. Race discrimination is expressly prohibited and constitutes an unlawful discriminatory employment practice.
4. Lawn Management Co. prohibits race discrimination and will not tolerate race discrimination against any employee who reports discrimination or harassment in the company's workplace.
5. Any employee who feels he or she has been the target of race discrimination is advised to report this action promptly to _____.

SIGNED this _____ day of _____, 2007.

name
title
LAWN MANAGEMENT CO., INC.

This OFFICIAL NOTICE shall remain posted for FOUR (4) full years from date of signing.

Exhibit A